IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3049 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANTOSH ALIAS RAMBHAVAN BHIRGUNATH BARAI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for the Petitioner.

MR AMRISH K PANDYA for Petitioner No. 1

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/06/2004

ORAL JUDGEMENT

The petitioner has challenged his detention order

dated 11.12.2003, by which he is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner was also served with the grounds of detention. In the aforesaid grounds, there is a reference in connection with one criminal case, which is pending against the petitioner. The aforesaid case is registered against the petitioner under the Bombay Prohibition Act. The Authority, after having been satisfied about the activities of the petitioner, has detained him under PASA. It is the aforesaid order, which is impugned in this petition.

The learned Advocate for the petitioner submitted that this is a solitary incident and, therefore, it cannot be said that the petitioner is a habitual offender or that he has disturbed public order. It is also submitted by the learned Advocate for the petitioner that, as per the allegations against the petitioner, he was in possession of Indian Made Foreign Liquor. The learned Advocate for the petitioner submitted that from the aforesaid incident, it cannot be said that the petitioner has tried to commit breach of public health in any manner, as either dealing in foreign liquor or consuming foreign liquor may not affect the public health. He also further submitted that since this is the solitary incident, the petitioner should not have been detained under PASA. He also submitted that the power exercised by the Authority under Section 9(2) of PASA by not disclosing the names of the witnesses is also not proper, as the Authority has not been subjectively satisfied about withholding the names of the witnesses, because no attempt is made to find out whether witnesses, whose names are not disclosed, have given the correct version of the incident.

The learned AGP, on the other hand, vehemently submitted that so far as the aspect about the petitioner being involved in bootlegging activity is concerned, he submitted that even dealing in foreign liquor can also be covered under the definition of the Act and the same can be said to be disturbing the public health. He also submitted that the authority, having been subjectively satisfied, rightly exercised the powers under Section 9(2) of PASA.

I have heard the learned Advocates for both the sides, in detail. In my view, since the petition is required to be allowed on the last point submitted by the learned Advocate for the petitioner, it is not necessary

to examine the other points raised by the petitioner.

In Sandip Omprakash Gupta v. State of Gujarat and others, 2004(1) GLR 864, a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a Bootlegger, is set aside. Since I am bound by the view taken by the learned single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, only on the basis of the aforesaid submission about solitary case lodged against the petitioner, which can be taken care under the ordinary criminal law, this petition is required to be allowed. The Co-detenus of the petitioner are also released by this court today in Spl.C.A. Nos.1808 of 2004 and 2028 of 2004 in view of the judgment of the learned single Judge. On that ground also, this petition is required to be allowed.

This petition is accordingly allowed on the aforesaid point. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

22nd June, 2004 (P.B. Majmudar, J.)

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(apj)